

In re KUMAR ET AL., Application No. 09/811,195
Amendment A

REMARKS

The Office action dated October 18, 2004, and the references cited have been fully considered. In response, please enter the amendments presented herein and consider the following remarks. Reconsideration and/or further prosecution of the application is respectfully requested. No new matter is added herein. The amendments made to the claims will be discussed hereinafter in conjunction with their respective claim sets.

In regards to the objection of claim 23, Applicants appreciate the suggestion and have amended claim 23 accordingly. Therefore, Applicants respectfully request this claim objection be withdrawn.

In regards to the claim rejections under § 112, claims 19-20 and 22 are canceled herein, and therefore, Applicants respectfully request all 35 USC § 112 rejections be withdrawn.

All claims stand rejected either under 35 USC § 102 or § 103(a) as being unpatentable over Abrishami et al., US Patent Application Publication No. US 2001/0033642 A1.

Applicants respectfully request all rejections be withdrawn as Abrishami et al., alone or in combination with other prior art or record, neither teaches nor suggests all the claim elements and limitations of the pending claims (either originally filed or as amended herein) as required by the MPEP. Note, if the Office action complies with MPEP § 706 and 37 CFR 1.104(c)(2), then Abrishami et al., the reference relied upon in rejecting the claims, is the best prior art reference available. As Abrishami et al. fails to teach all the claim limitations, then all pending claims are believed to be allowable over the best prior art available, and Applicants request the claims be allowed and the application pass to issuance.

For anticipation under 35 USC § 102, the reference must teach each and every aspect of the claimed invention either explicitly or impliedly, and the burden is on the Office to present a *prima facie* case of anticipation. MPEP § 706.02. Inherent means it *must* occur. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (*emphasis in original*).

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For obviousness under 35 USC § 103(a) requires "the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." MPEP § 706.02(j) (*citing In re Vaack*, 947 F.2d 488 (Fed. Cir. 1991))(emphasis added). And, the burden is on the Office Action to establish a *prima facie* case of obviousness.

In order to meet these burden, the Office must at least present a rejection for each and every claim limitation, with these limitations being construed in light of the specification; all of *the presented rejections for a claim must be used in a consistent and as a whole cohere*; and the application of the reference(s) must teach the claim limitation to which it is/they are applied.

Applicants will first address the claim set consisting of original claims 27-29. Independent claim 27 stands rejected as being anticipated by Abrishami et al., and its dependent claims 28 and 29 stand rejected as being obvious in light of Abrishami et al. Applicants respectfully traverse the rejections of claims 27-29, as the Office action fails to meet it burden of establishing a *prima facie* case of anticipation or obviousness and the Office does not consistently construe the claim limitations based on their antecedent basis, and the art neither teaches nor suggests all of the claim limitations. Moreover, the Office fails to address the claim limitations, rather apparently copies a previously presented rejection for a method claim, rather than providing specific rejections for each and every claim element/limitation as required by the MPEP. For example, claim 27 recites a "signaling agent", not "signaling to establish a call" as recited in original claim 1. This becomes problematic for a proper rejection, as the claim recites that the signaling agent performs certain functions based on proper claim construction and antecedent basis (e.g., "a signaling agent", "the signaling agent").

Specifically, claim 27 requires the signaling agent "to establish a call including a first bandwidth across a packet network" and the signaling agent to "requests (sic) a modification of the call from the first bandwidth to a second bandwidth in response to a particular type of traffic

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detected by the telephonic interface." The Office action cites paragraphs [0058] and [0065], so apparently the Office is referring to the fax machine as the signaling agent. The Office cites voice/FAX/Data detector 31 for detecting the traffic characteristic, so the Office must be applying that as the telephonic interface. Also, the bandwidth manager to which the Office uses in the rejection is located as part of a voice/fax/data fax relay gateway which is part of the network, and not part of the fax machine. Therefore, Abrishami et al. neither teaches nor suggests a signaling agent that performs the limitations recited in independent claim 27. For at least these reasons, claims 27-29 are believed to be allowable.

Next, applicants will address the claim set consisting of claims 30 and 31. First, independent 30 is amended herein to recite "an apparatus interfacing a communications device with a network," and to specify that the telephonic signal is received from *the communications device* and the call is established over *the network*, with support provided at least by FIG. 1A (e.g., Integrated Access Device - IAD 101) and its corresponding discussion on pages 6 and 7, and dependent claim 31, depending from claim 30, is amended to recite the "apparatus" of claim 30. New claim 32 is also added to recite that "the communications device is a packet network non-compliant telephonic device." For example, in one embodiment, an IAD is used to connect one or more packet network non-compliant telephonic devices, such as, but not limited to telephones, modems and facsimile devices, to a packet network (e.g., an ATM network), as stated on page 5, 2nd paragraph of the originally filed application.

Abrishami et al., on the other hand, is concerned with the network self-adjusting to the type of call, with this functionality provided for inside the network. Abrishami et al. neither teaches nor suggests an interface device, such as that recited in claims 30-31. Therefore, Applicants respectfully request the rejections of claims 30-31 be withdrawn.

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Next applicants will address the rejections of claims 23-26. Independent claim 23 recites "[o]ne of more computer readable medium media included in an apparatus interfacing a communications device with a packet network, and to explicitly state that the call is over the packet network and the indication of the type of traffic included in the call is determined within the communications device. Also, new claim 33 is added to depend from claim 23 and to recite that the communications device is a packet network non-compliant telephonic device. Support for these amendments is provided at least by FIGs. 1A, 2, 3 and 4, and their corresponding discussion, especially on pages 5-7 as discussed *supra*. As Abrishami et al., in contrast to that recited in claims 23-26 and 33, is concerned *with the network* self-adjusting to the type of call, with this functionality provided for *inside the network*. For at least these reasons, Abrishami et al. neither teaches nor suggests an interface device, such as that recited in claims 23-26 and 33. Therefore, Applicants respectfully request the rejections of claims 23-26 be withdrawn, and claims 23-26 and 33 be allowed.

Finally, in regards to the three method claim sets of claims 1-9 and new claim 34, claims 10-13, and claims 14-18 and 21, independent claims 1, 10, and 14 are amended herein in the same manner as discussed in regards to the amendments to claims 23 and 30, in that these claims recite that the method is performed by an apparatus interfacing a communications device with a packet network, with references to "the communications device" and "the packet network" within the claim elements so as to breath life into the preambles of these claims. New claim 34, similar to new claims 32 and 33, depends from claim 1. Support for these amendments is provided in the originally filed application as previously discussed, including that provided at least by FIGs. 1A, 2, 3 and 4, and their corresponding discussion, especially on pages 5-7. As Abrishami et al., in contrast to that recited in claims 1-18, 21 and 34, is concerned *with the network* self-adjusting to the type of call, with this functionality provided for *inside the network*. For at least these reasons, Abrishami et al. neither teaches nor suggests an interface device, such

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as that recited in claims 1-18, 21 and 34. Therefore, Applicants respectfully request the rejections of claims 1-18 and 21 be withdrawn, and claims 1-18, 21 and 34 be allowed.

For at least these reasons, all pending claims 1-18, 21, and 23-34 are believed to be allowable.

FINAL REMARKS. In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over the prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney.

Applicants believe a one-month extension of time is required, and hereby petitions any extension of time required and has included herewith a credit card payment form (PTO-2038) for payment of the extension fee, and Applicants hereby authorize the Commissioner to charge/credit any additional associated fees to Deposit Account No. 501430.

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Additionally, the Commissioner is hereby generally authorized under 37 C.F.R. § 1.136(a)(3) to treat this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 requiring an extension of time as incorporating a request therefore, and the Commissioner is hereby specifically authorized to charge Deposit Account No. 501430 for any fee that may be due in connection with such a request for an extension of time. Moreover, the Commissioner is hereby authorized to charge payment of any fee due any under 37 C.F.R. §§ 1.16 and § 1.17 associated with this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 or credit any overpayment to Deposit Account No. 501430.

Respectfully submitted,
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By



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